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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,321	04/23/2001	Dan W. Urry	BERL-020/04US	6851

23419 7590 10/02/2002

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[REDACTED] EXAMINER

PHAN, HIEU

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3738

DATE MAILED: 10/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/841,321	URRY, DAN W.	
	Examiner Hieu Phan	Art Unit 3738	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
Period for Reply			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.			
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 			
Status			
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>23 April 2001</u> .			
2a) <input type="checkbox"/> This action is FINAL.		2b) <input checked="" type="checkbox"/> This action is non-final.	
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.			
Disposition of Claims			
4) <input checked="" type="checkbox"/> Claim(s) <u>1-34</u> is/are pending in the application.			
4a) Of the above claim(s) _____ is/are withdrawn from consideration.			
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.			
6) <input type="checkbox"/> Claim(s) _____ is/are rejected.			
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.			
8) <input checked="" type="checkbox"/> Claim(s) <u>1-34</u> are subject to restriction and/or election requirement.			
Application Papers			
9) <input type="checkbox"/> The specification is objected to by the Examiner.			
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.			
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).			
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner.			
If approved, corrected drawings are required in reply to this Office action.			
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.			
Priority under 35 U.S.C. §§ 119 and 120			
13) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).			
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:			
1. <input type="checkbox"/> Certified copies of the priority documents have been received.			
2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.			
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).			
* See the attached detailed Office action for a list of the certified copies not received.			
14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).			
a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.			
15) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.			
Attachment(s)			
1) <input type="checkbox"/> Notice of References Cited (PTO-892)		4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .	
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)	
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .		6) <input type="checkbox"/> Other: _____ .	

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed second peptide unit:

- A) Specie 1: SEQ ID NO: 46
- B) Specie 2: SEQ ID NO: 47
- C) Specie 3: SEQ ID NO:52

2. This application contains claims directed to the following patentably distinct species of the claimed polymer:

- D) Specie 1: polymer is a nonapeptide
- E) Specie 2: polymer is a pentapeptide
- F) Specie 3: polymer is a tetrapeptide

Upon election of one of the specie above, another election is required:

- G) Sub-Specie 1: pentapeptide

- I: SEQ ID NO: 17
- II: SEQ ID NO: 20
- III: SEQ ID NO: 43
- IV: SEQ ID NO: 44
- V: SEQ ID NO: 45
- VI: SEQ ID NO: 48
- VII: SEQ ID NO: 49
- VIII: SEQ ID NO: 51

- H) Sub-Specie 2: tetrapeptide

- I: SEQ ID NO: 16
- II: SEQ ID NO: 41
- III: SEQ ID NO: 42

IV: SEQ ID NO: 50.

3. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu Phan whose telephone number is 703-308-8969. The examiner can normally be reached on Monday-Friday from 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

Hieu Phan
Examiner
Art Unit 3738



September 30, 2002


David J. Isabella
Primary Examiner